

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD E. COOLEY,

Defendant.

4:14-CR-3041

ORDER

This matter is before the Court on the defendant's Objection (filing [26](#)) to the presentence investigation report. The objection is premature and will be overruled without prejudice to reassertion.

Paragraph 3 of the Court's Order on Sentencing Schedule (filing [21](#)) provides that the probation office will deliver the initial presentence report to counsel (and through defense counsel, to the defendant) before submitting it to the Court. Paragraph 4 of the sentencing schedule contemplates that counsel may then object to the probation office, so that the parties and the probation office have an opportunity to correct any errors of law or fact in the initial presentence report before it is submitted to the Court. Obviously, counsel and the probation office will not always agree, and the probation office may submit the initial or revised presentence report to the Court, pursuant to paragraph 5 of the sentencing schedule, without making any or all of the changes requested by counsel. At that point, it is appropriate for counsel to assert an objection, pursuant to paragraph 6(c) of the sentencing schedule, raising any unresolved issues with the Court.

The objections filed in this case are directed at the probation office's initial presentence report, which has not yet been submitted to the Court. The Court assumes that the defendant's objections have also been given to the probation office, so that the probation office may address them in the final presentence report submitted to the Court. Any objections that are not resolved to counsel's satisfaction may then be reasserted in a sentencing statement filed on or before the date provided in paragraph 6 of the Court's Order on Sentencing Schedule (filing [21](#)).

As an aside—counsel may wish to review and consider the Court's opinion in *United States v. Abraham*, 944 F. Supp. 2d 723, 730-35 (D. Neb. 2013), before preparing and filing their sentencing statements, as familiarity

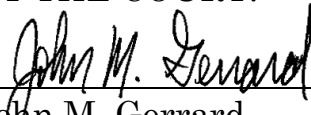
with the Court's modified U.S.S.G. § 2G2.2 framework may be helpful to counsel in framing any objections they wish to reassert.

IT IS ORDERED:

1. The defendant's Objection (filing 26) to the presentence investigation report is overruled without prejudice to reassertion.

Dated this 28th day of July, 2014.

BY THE COURT:



John M. Gerrard
United States District Judge